

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.HARIPRASAD

THURSDAY, THE 15TH DAY OF OCTOBER 2015/23RD ASWINA, 1937

Bail Appl..No. 6330 of 2015 ()

CRIME NO. 1152/2015 OF KOTTAYAM WEST POLICE STATION, KOTTAYAM DISTRICT

PETITIONER/ACCUSED NO.2:

SAJITH KUMAR C., AGED 25 YEARS,
S/O. CHANDRASEKHARA PILLAI, CHANDRALAYAM,
THAZHATHU VADAKKU P.O., PATTAZHY VADAKKEKARA VILLAGE,
KOLLAM DISTRICT.

BY ADVS.SRI.C.S.MANU
SRI.S.K.PREMRAJ
SRI.V.S.PREJITH
SMT.NEETHU.K.SHAJI
SRI.C.Y.VIJAY KUMAR

RESPONDENT(S)/COMPLAINANT & INVESTIGATING OFFICER :

1. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM-682 031.
2. SUB INSPECTOR OF POLICE,
KOTTAYAM WEST POLICE STATION,
KOTTAYAM DISTRICT-686 105.

BY PUBLIC PROSECUTOR SMT. R.REMA

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION
ON 15-10-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

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A.HARIPRASAD, J.

B.A.No.6330 of 2015

Dated this the 15th day of October, 2015

ORDER

Application filed under Section 438 of the Code of Criminal Procedure.

2. Petitioner is the 2nd accused in Crime No.1152 of 2015 of Kottayam West Police Station registered for the offences punishable under Sections 143, 147, 148, 149, 341, 294(b), 308, 326 and 506(ii) of the Indian Penal Code.

3. Prosecution case is that accused persons who are activists of a party due to enmity towards the members of another party on 22. 08.2015 attacked the defacto complainant and inflicted injury with an iron rod. Petitioner pleaded innocence.

4. Heard both sides.

5. Learned Public Prosecutor submitted that the petitioner is named in the F.I.S. It is the allegation that he used an iron rod to cause the injury. The defacto

complainant sustained fracture of Ulna. Application for pre-arrest bail filed by other accused persons to whom bail was granted stand on a different footing.

6. Considering the nature allegations and the necessity of the recovery of weapons, I am not inclined to grant pre-arrest bail to the petitioner.

7. Leaned counsel apprehends that the Magistrate having jurisdiction will mechanically remand the accused. Leaned counsel for the petitioner relying on the decisions **Sukhwant Singh v. State of Punjab** [(2009) 0 Supreme (SC) 1116] and **Mukesh Kishanpuria v. State of West Bengal** [(2010) 0 Supreme (SC) 390] contended that the Supreme Court has repeatedly stated that the power to grant regular bail includes the power to grant interim bail also in appropriate cases. One shall not lose sight of the fact that power to grant bail is a discretionary power which has to be exercised judiciously, taking into consideration all the matters placed before the court. Apprehension of the petitioner that he will be mechanically remanded by the Magistrate without considering the merit of his application is not correct. The

accused can in appropriate cases, seek interim bail. As this Court is not inclined to grant anticipatory bail, it goes without saying that the learned Magistrate before whom the application for regular bail comes up will consider all the relevant contentions raised by both the parties while exercising his discretion to grant or to deny bail to an accused.

With these observations, the application is disposed of with a direction that the petitioner shall within one week surrender before the court concerned and move for a regular bail. In that event, the learned Magistrate shall consider the application with notice to the Prosecutor on the date of its filing and dispose of the same as expeditiously as possible, if possible on the date of his surrender itself.

Bail application accordingly disposed.

Sd/-
A.HARIPRASAD, JUDGE.

AS

/True Copy/

P.A. to Judge